

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE**

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PROPOSED AMENDED REGULATION TEXT

§ 2632.13. Eligibility to Purchase Good Driver Discount Policy and Guidelines for Determination of "Primarily At-Fault;" Accidents and Eligibility to Purchase Good Driver Discount Policy

(a) This section sets forth the procedures An insurer shall use the following method follow to In determining a driver's qualification to purchase a good driver discount policy pursuant to California Insurance Code Section 1861.025, an insurer shall determine the driver's violation points and whether a driver may be charged with a considered to be primarily at-fault for an accident for the purposes of

(1) For the purpose of determining establishing the driver's eligibility for the Good Driver Discount policy pursuant to Insurance Code Section 1861.025s as set forth in this section. This section shall also apply in determining whether a driver was primarily at fault in an accident for the purpose of determining, and

(2) For the purpose of determining the driver's driving safety record (First Mandatory Factor) pursuant to section 2632.5.

(b) Violation point counts and primarily at fault accidents shall be determined as follows:

(1) The insurer may count one violation point count for each violation point count which has been assessed by the California Department of Motor Vehicles under California Vehicle Code section 12810, Subsection (a), (b), (c), (d), (e), (g) and (h), for traffic violation convictions with conviction dates not more than three years proceeding the effective or renewal date of the policy, and which have not been made confidential under the California Vehicle Code;

(2) For violations not occurring in California, the insurer may count one violation point count for each violation point count which would have been counted under subsection (1) above had the violation occurred in California. Violation points shall not be counted pursuant to this Subsection if violation points were counted for the violation pursuant to Subsection (b)(1) above;

(3) The insurer may count one violation point if a driver was involved in an accident which resulted only in damage to property if the driver was primarily at fault in the accident, as defined in Subsection (c). A driver may be determined to be primarily at fault for such an accident where the accident was a solo vehicle accident, subject to the exceptions set forth in subsection (d).

~~(e) a driver~~ A driver may be considered to be principally at-fault in an accident ~~occurring not more than three years preceding the effective or renewal date of the policy~~ if the driver's actions or omissions were at least 51 percent of the proximate cause of the accident, subject to the exceptions set forth in Subsections (c) and (d), ~~d), and in accidents not resulting in death, if the damage to the property of any one person caused by the accident exceeded \$ 750.00.) and provided that:~~

~~(1) For an accident that resulted only in damage to property, if the total loss or damage caused by the accident exceeded \$1000, or, for an accident that resulted in bodily injury, the insurer obtains reasonable evidence of bodily injury.~~

~~(2) For the insurer at the time of the accident, reasonable evidence of bodily injury shall always include medical records received by the insurer during the claims process for the accident. For subsequent insurers or where medical records are unavailable, bodily injury damages must exceed \$1000.~~

~~(cd)~~ It shall be rebuttably presumed that ~~A~~ a driver is not ~~shall not be considered to be~~ principally at-fault ~~if the~~ for an accident ~~occurred~~ under any of the following circumstances:

~~(1) The vehicle was lawfully parked at the time of the accident. A vehicle rolling from a parked position shall not be considered to be lawfully parked, but shall be considered as in the operation, of the last operator; lawfully parked at the time of the accident. A vehicle rolling from a parked position shall not be considered to be lawfully parked, but shall be considered as in the operation, of the last operator;~~

~~(2) The vehicle was~~ (2) The vehicle was struck in the rear by another vehicle; and the driver has not been convicted of a moving traffic violation in connection with the accident;

~~(323)~~ The driver was not convicted of a moving traffic violation and the operator of another vehicle involved in the accident was convicted of a moving traffic violation;

~~(434)~~ The driver's vehicle was damaged as a result of contact with a vehicle operated by a "hit and run" operator of another vehicle and the accident was reported to legal authorities within a reasonable time after the accident;

~~(545)~~ The accident resulted from contact with animals, birds, or falling objects;

~~(65) The driver was responding to a call of duty as a paid or volunteer member of any police or fire department, first aid squad, or of any law enforcement agency, while performing any other governmental function in a public emergency; or.~~

~~— (76) The accident was a solo vehicle accident that was principally caused by a hazardous condition of which a driver, in the exercise of reasonable care, would not have noticed (for example, "black ice.") or could not have avoided (for example, an accident that occurs when a driver maneuvers to avoid a passing vehicle making an unsafe lane change).~~

(d) It shall be conclusively presumed that a driver is not principally at-fault for an accident under the following circumstances:

(1) When the driver was responding to a call of duty as a paid or volunteer member of any police or fire department, first aid squad, or of any law enforcement agency, while performing any other governmental function in a public emergency; or

(2) When the accident was a solo vehicle accident that was principally caused by a hazardous condition of which a driver, in the exercise of reasonable care, would not have noticed (for example, "black ice") or could not have avoided (for example, an accident that occurs when a driver maneuvers to avoid a passing vehicle making an unsafe lane change).

~~(dec)~~ An insurer providing insurance coverage at the time of an accident shall not make a determination that a driver was principally at-fault for an accident, ~~other than an indisputably solo vehicle accident and which is not of the type specified in subpart (d),~~ unless the insurer first does the following:

(1) ~~¶~~The insurer shall make an investigation of the accident;

(2) ~~¶~~The insurer shall provide written notice to the insured of the result of such investigation, including any determination that the insured was principally at-fault. The notice shall specify the basis of any determination that a driver was principally at-fault and the basis of any determination that an injury occurred. The notice shall advise the insured of the right to reconsideration of the determination of fault, as set forth ~~for~~ in Subsection ~~(dec)~~(3);

(3) Within 30 days of receipt by the insured of a written notice required by Subsection ~~(dec)~~(2), the insured may request reconsideration of the insurer's determination that the insured was principally at-fault. ~~The insurer shall provide written notice of its decision upon reconsideration with 30 days of the insured's request therefor and the notice shall state the reasons for its decision upon reconsideration.~~ An insurer shall provide a decision on the request for reconsideration to an insured in writing within 30 days of receipt of the insured's request for reconsideration. The reconsideration shall be made by an employee or agent of the insurer other than the employee or agent who made the determination being reconsidered. The right to reconsideration set forth herein shall not affect any other rights of the insured.

~~(eff)~~ If a driver had insurance that provided coverage for an accident, a subsequent insurer which did not provide coverage at the time of the accident and to whom an application for the issuance of a policy of insurance is made, or from whom a renewal policy is offered, may not consider the driver to be principally at-fault for the accident unless the following circumstances apply:

(1) ~~If~~ If the insurer that provided coverage at the time of the accident ~~charged~~ determined the driver ~~with a violation point~~ to be principally at-fault for the accident in accordance with this Section, or the predecessor of this Section, which may appear on a subscribing loss underwriting exchange carrier report, the subsequent insurer shall make reasonable efforts to contact the insurer who provided coverage at the time of the accident to confirm the principally at-fault

determination and, if applicable, that an injury or death resulted unless the driver confirms and the insurer records that the driver was principally at-fault for the accident as defined in subsection (b) and, if applicable, that an injury or death resulted or unless the subscribing loss underwriting report contains sufficient information to establish each of the elements that are necessary to determine that the driver is principally at-fault for the accident as provided in subsection (b) and, if applicable, that an injury or death resulted; or,

(2) If the driver was not covered by an automobile insurance policy delivered or issued for delivery in California and issued and in force pursuant to the laws of California at the time of the accident, ~~and the insurer shall determine that whether~~ the driver was ~~principally~~ principally at-fault as provided for in Subsection (~~egg~~); or,

(3) If the insurer of the driver at the time of the accident did not have notice of the accident and no other insurer of any person involved in the accident made a determination that any other driver was at least 51% of the proximate cause of the accident, ~~and the insurer shall determine that whether~~ the driver was principally at-fault as provided for in Subsection (~~egg~~); or,

(4) In the absence of any principally at-fault determination made by another insurer, ~~if~~ the driver shall ~~confirm~~ and the insurer shall record ~~in writing~~ facts sufficient to find that the driver is principally at-fault for the accident, as defined by subsection (b).

(~~egg~~) If a driver did not have insurance that provided coverage for an accident, and if no other insurer of any person involved in the accident made a determination that any other driver was at least 51% of the proximate cause of the accident, an insurer to whom an application for the issuance or renewal of a policy of automobile insurance is made may consider a driver to be principally at-fault if the insurer ~~has~~ obtains and records sufficient information to establish each of the elements that are necessary to determine ~~make that determination or if the driver confirms in writing~~ that the driver is principally at-fault for the accident as defined by provided in subsection (b), including any written confirmation of such information by the driver. For the purpose of this Subsection, the following shall apply:

(1) ~~The~~ insurer shall make reasonable efforts to obtain information concerning the accident from any insurer of a person involved in the accident;

(2) If the insurer cannot obtain information concerning the accident from other insurers, the insurer shall request sufficient information from the driver;

(3) upon reasonable request by the insurer, a driver shall provide sufficient information concerning the accident to the insurer for the insurer ~~to~~ determine whether the driver was principally at-fault. ~~If, if the driver fails or refuses to provide such information within 230 days of receipt the date a written request is sent of an insurers' written request,~~ then the insurer may count a violation point for the accident or may consider the driver to be principally at-fault. ~~The insurer may not count the accident as one involving bodily injury or death based solely on an~~ An insurer shall not presume that a driver is principally at-fault for an accident listed on the driver's public record of traffic violation convictions available from the California Department of Motor

Vehicles and similar public records of traffic violation convictions that are available from other jurisdictions (hereinafter sometimes referred to as the “MVR”) or on a subscribing loss underwriting exchange carrier report that does not contain all information necessary to determine that a driver was principally at-fault for an accident as defined in subsection (b) and, if applicable, that the accident resulted in a bodily injury or death, C.L.U.E. report.

(ghh) An insurer that has made a determination that its insured was principally at-fault in an accident shall not refuse to disclose that determination to any person involved in that accident, to any person legally responsible for damages resulting from that accident, or to an insurer or prospective insurer of any such person. The requirement for disclosure shall pertain only to the ultimate determination of its insured’s fault, and disclosure shall not be required of any other information in its possession or any determination of fault of any person other than the insured.

(~~hi~~i) Notwithstanding any other provision of this section, in determining a driver’s at-fault accident history, a driver’s declaration, under penalty of perjury, attesting to his or her at-fault accident history, shall be sufficient proof of that accident history in the absence of contrary information from an independent source. If an insurer discovers ~~that~~ contrary information from an independent source disputing the driver’s declaration contains a fraudulent or material misrepresentation, the insurer may, and wishes to use that said such information to rate the policy, the insurer shall make reasonable efforts to confirm any principally at-fault notation on a subscribing loss underwriting exchange carrier report with the insurer at the time of the accident and notify the driver in writing and request that the driver confirm the accuracy of the contrary information within 30 days of receipt the date the request is sent. If the driver confirms the accuracy of the contrary information and the insurer records the contrary information and confirmation, the insurer may use the information to determine the driver’s at fault history as confirmed by the driver whether the driver is principally at-fault for the accident pursuant to subsection (b) and rate the policy accordingly. If the driver disaffirms the accuracy of the information, the insurer shall provide the driver with a reasonable opportunity to provide evidence to the contrary and then, using all of the information available to it, determine whether the driver is principally-at fault pursuant to subsection (b). If the driver does not respond to the insurer’s request to confirm the accuracy of the information confirm the accuracy of the contrary information in writing, the insurer may only find the driver to be principally at-fault as follows: use the contrary information as follows: may cancel the policy pursuant to California Insurance Code sections 661 and 1861.03(c)(1) and take any other action authorized by law.

(1) If the insurer that provided coverage at the time of the accident determined the driver to be principally at-fault for the accident in accordance with this Section, the insurer may consider the driver to be principally at-fault; or

(2) If the driver did not have insurance that provided coverage for an accident, and if no other insurer of any person involved in the accident made a determination that any other driver was at least 51% of the proximate cause of the accident, principally at-fault as defined in subsection (b), the insurer may consider a driver to be principally at-fault if the insurer has sufficient information to establish each of the elements that are necessary to determine that the driver is principally at-fault for an accident make that determination as provided in subsection (b). For the purposes of this subsection, an accident reported solely on an MVR shall not be

~~considered “sufficient information.”~~ An insurer shall not presume that a driver is principally at-fault for an accident listed on the driver’s MVR or on a subscribing loss underwriting exchange carrier report that does not contain all information necessary to determine that a driver was principally at-fault for an accident as defined in subsection (b) and, if applicable, that the accident resulted in a bodily injury or death.

Nothing in this subdivision shall prevent an insurer from using information available from the public record of traffic violation convictions as set forth in section 2632.5(c)(1)(A), principally at-fault accidents as set forth in this section, or information from a subscribing loss underwriting exchange carrier provided that the insurer informs a driver of the source of the information upon which it relies at the time that it makes a determination that a driver is principally at-fault for an accident and offers the driver the contact information for the source. Nothing in this subdivision shall prevent an insurer from asking follow-up questions about the information contained in the declaration attesting to a driver’s principally at-fault accident history, and nothing in this subdivision shall authorize a driver to refuse to answer a reasonable follow-up question.

~~If an insurer discovers contrary information from an independent source disputing the driver’s declaration, the insurer shall so notify the driver within ten days of discovery of the contrary information and allow the driver at least five days to provide response.~~

~~Within 45 days of the effective date of this subsection, each insurer writing private passenger automobile insurance shall file with the Department’s Rate Filing Bureau (1) evidence demonstrating its compliance with this subsection or (2) a plan demonstrating how it will comply with this subsection. If the Insurer files a plan demonstrating how it will comply with this subsection, it shall, within 120 days of the effective date of this subsection, file class plan and/or rate applications which are in compliance with this subsection. For insurers whose plan requires the Commissioner’s prior approval of a revised class plan and/or rate application to achieve compliance, the insurer shall implement the revised class plan and/or rate application in accordance with the terms of the Commissioner’s approval of the revised class plan and/or rate application.~~

~~(h)~~ (j) In determining eligibility to purchase a good driver discount policy, the requirement that the driver have been licensed to drive a motor vehicle for the previous three years shall mean that the driver has been licensed to drive in any jurisdiction.

~~(k)~~ (l) This subsection clarifies the application of Insurance Code section 1861.025, subsections (b)(1) and (3) and subsection (d), criteria for eligibility for a Good Driver Discount policy shall be determined as follows: All other eligibility criteria for Good Driver Discount policies that are provided in section 1861.025 shall also be followed.

(1) Subject to the prohibitions of Insurance Code sections 488 and 488.5, the insurer may assign one violation point for each violation point that the California Department of Motor Vehicles has assessed under California *Vehicle Code* section 12810, Subsections (a), (b), (c), (d), (f), (i) (1), and (j) for traffic violation convictions with conviction dates not more than three years

preceding the effective or renewal date of the policy, and which have not been made confidential under the California Vehicle Code;

(2) For violations not occurring in California, the insurer may assign one violation point for each violation point which would have been assessed under subsection (j)(1) above had the violation occurred in California. Violation points shall not be counted pursuant to this Subsection if violation points were counted for the violation pursuant to Subsection (j)(1) above;

(3) For accidents, the insurer ~~may~~ shall do one of the following to determine eligibility for the Good Driver Discount policy:

(i) Assign one violation point for each accident that if a driver ~~was~~ has been involved in an accident during the previous three years for which he or she was principally at-fault that resulted only in damage to property pursuant to subsection (b), or

(ii) ~~Disqualify~~ Determine that the driver is ineligible to ~~from the~~ purchase of a Good Driver Discount policy if, during the previous three years, ~~a~~ the driver ~~was~~ has been involved in an accident for which he or she was principally at-fault that resulted in a death or bodily injury.

AUTHORITY:

Note: Authority cited: *Sections 791.10, 1861.02, 1861.025, 12921 and 12926, Insurance Code; and Calfarm Insurance Company v. Deukmejian 48 Cal. 3d 805 (1989).* Reference: *Sections 488.5, 1861.02 and 1861.025, Insurance Code; and Sections 12810 and 16000, Vehicle Code.*